IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7149 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MOHANBHAI M CHANDEGARA

Versus

DISTRICT REGISTRAR CO OP. SOCIETIES

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Appearance:

1. Special Civil Application No. 7149 of 1998

MR BN PATEL for Petitioner No. 1

MR SIRAJ GORI AGP for Respondent No. 1-2

Respondent No. 3 :: Served

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/2003

ORAL JUDGEMENT

The petitioner before this Court is one of the members and the former President of the Karmachari Nagar

Cooperative Housing Society Limited, the respondent no. 3 herein [hereinafter referred to as, "the Society"]. It appears that the petitioner being the President of the Society, was entrusted with the work of raising construction of the houses for the members of the Society. The said houses were constructed during the period from the year 1990-95. The petitioner had been the President of the Society from 1st July, 1990 to 30th June, 1992. It appears that the members of the Society had contributed a sum of Rs. 15,65,000/=, however, the construction cost came to Rs. 17,02,209/=. Thus, the petitioner was alleged to have misapplied sum of Rs. 1,37,209/=. Pursuant to the complaint made by some of the members of the Society and the report of the auditors, an inquiry under section 93 of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as, "the Act"] was ordered. A chargesheet came to be issued upon the petitioner on 10th April, 1995. The said chargesheet was replied to by the petitioner on 4th September, 1995. The inquiry officer submitted his report on 12th March, 1996. Pursuant to the said inquiry, the respondent no. 1 directed the petitioner to remit sum of Rs. 1,37,209/= and a sum of Rs. 17,793/= to the Society. Feeling aggrieved, the petitioner preferred Appeal No. 176 of 1996 before the Gujarat State Cooperative Tribunal. The said appeal was dismissed by the Tribunal on 20th June, 1998. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Patel has submitted that it is true that at the relevant time, the petitioner was the president of the Society. The responsibility of commissioning the houses for the members of the Society was entrusted to the petitioner. It is also true that a sum of Rs. 15,65,000/= was received by way of contribution by the members of the Society. As against that, a sum of Rs. 17,02,209/= was spent for the construction. However, merely because some more expense was incurred on construction, the petitioner cannot be said to be guilty of misapplying the money of the Society or of misfeasance. He has submitted that there is no allegation against the petitioner that the petitioner had misappropriated the said amount, hence, section 93 could not have been invoked. The inquiry under section 93 of the Act and the decision thereon are vitiated and require to be quashed and set-aside. Mr.Patel has also submitted that the chargesheet given to the petitioner is totally vague. No inquiry could have been conducted on such vague charge. Besides, under his reply dated 4th September, 1995, the petitioner had asked for certain

documents which were not given to the petitioner at all. In absence of the said documents, the petitioner cannot be said to have been given a fair opportunity to defend himself. The inquiry is vitiated on this count also.

Mr. Gori has vehemently contested the petition. He has read over the inquiry report and the decision of the authority below. He has submitted that there were several irregularities committed by the petitioner. Admittedly, some payments were made by the petitioner to the contractor, over and above the agreed amount. He has also submitted that for additional construction made in the individual houses, the concerned member had made direct payment to the contractor. The contract was given without inviting tenders for the same. The payment in addition to the agreed contract amount was made without the decision of the Society. The petitioner also failed to maintain proper account for the construction and the payments made. Being the President, it was the duty of the petitioner to maintain such accounts. Since the petitioner failed to maintain such accounts, the authority below has rightly drawn an interference against him and held the petitioner liable for making excess payment to the contractors. Mr. Gori has also pointed out that certain equipments were purchased by the society from the society-funds. The petitioner, however, failed to account for the said equipments. The petitioner should, therefore, be held liable to indemnify the Society for the loss of such equipments. In the submission of Mr. Gori, the finding recorded by the Inquiry Officer has been confirmed by the authority below and the Tribunal also. In view of these concurrent finding recorded against the petitioner, the impugned order does not warrant interference. The petition, therefore, deserves to be dismissed.

It is not disputed that the petitioner had paid the additional amount to the contractor, over and above the agreed amount and the contribution made by the members of the Society. However, the question is - Can the petitioner be said to have misapplied the funds of the Society or can he be said to be guilty of misfeasance as envisaged under section 93 of the Act. It should be noted that there is no charge of misappropriation or breach of trust against the petitioner. The sum and substance of the charge made against the petitioner is that the petitioner had made payment of Rs. 1,37,209/= to the contractor in addition to the agreed amount and that he spent a sum of Rs. 17,793/= under the Heading "Light & Water". The petitioner also failed to account for the Dead Stock.

It appears that in addition to the agreed construction, additional constructions were made in certain houses of the Society, according to the convenience of the concerned members. A finding is recorded that the concerned member had personally made payment to the contractor for such additional construction. I must, however, say that the said finding is not supported by the evidence on record. There is nothing on the record -neither the statement of the concerned members nor a piece of documentary evidence to support the said finding. On the contrary, it appears that for such additional construction, the additional payment was required to be made which the petitioner had made from the funds of the Society. Even in the chargesheet framed against the petitioner, it is alleged that the petitioner caused some additional construction to be made in the individual houses without getting sanction for such alterations. As to the aforesaid sum of Rs. 17,793/= spent on light and water, the Inquiry Officer has categorically held that under the agreement in question, the said expenses were to be borne by the Society. Nevertheless, the liability for the said sum of Rs. 17,793/= has been erroneously fastened upon the petitioner. As to the dead-stock, the authority below has recorded that petitioner could not account for the dead-stock. However, there is no material on record with respect to the extent of dead-stock which the petitioner could not account for and the value of such dead-stock.

In above view of the matter, I am of the opinion that the charge framed against the petitioner is vague and the findings are recorded on mere inference and surmises which has resulted into miscarriage of justice. The inquiry held against the petitioner is hence vitiated. The decision thereon requires to be quashed and set-aside.

In the result, the petition succeeds. The impugned judgment dated 20th June, 1998 passed by the Tribunal in Appeal No. 176 of 1996 and the order dated 24th April, 1996 made by the authority below are quashed and set-aside. Rule is made absolute. There shall be no order as to costs.

[Miss R.M Doshit, J.]

Prakash*